

**FILED**

**OCT 24 2005**

**RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

MORGAN, LEWIS & BOCKIUS LLP  
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Attorneys for Plaintiff  
GREGORY S. DAILY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

GREGORY S. DAILY,

Plaintiff,

vs.

FEDERAL INSURANCE CO., et al.,

Defendants.

AND RELATED CROSS-ACTION.

Case No. C 04-3791 PJH

**STIPULATION AND ~~PROPOSED~~  
ORDER OF DISMISSAL**

IT IS HEREBY STIPULATED by and between the parties to this action, through their designated counsel, that the above-captioned action be, and hereby is, dismissed with prejudice, with respect to all claims for Defense Costs<sup>1</sup>, and for conduct of Defendants Federal Insurance Company ("Federal") and Royal Indemnity Company, as successor in interest to Royal Insurance Company of America ("Royal"), up to and including September 6, 2005, pursuant to FRCP 41(a)(1);

IT IS HEREBY STIPULATED that with respect to all other claims, including the

<sup>1</sup> "Defense Costs" refer to all attorneys fees and costs (including but not limited to expert witness fees, court costs, deposition expenses, copying expenses and other costs reasonably necessary to the defense of Daily in the underlying litigation) with respect to Daily's defense of the underlying litigation that have been or will be incurred through and including resolution of the appeal by Auerbach of the judgment in favor of U.S. Bancorp entered on July 22, 2005.

1 Counterclaim filed by Federal against Gregory S. Daily ("Daily"), the above-captioned action be,  
2 and hereby is, dismissed without prejudice;

3 IT IS HEREBY STIPULATED that each party will bear its own costs with respect to this  
4 action.

5 Dated: October 16, 2005

MORGAN, LEWIS & BOCKIUS LLP

7 By Cristina M. Shea  
8 Cristina M. Shea  
9 Attorneys for Plaintiff  
10 GREGORY S. DAILY

11 Dated: October \_\_\_\_\_, 2005

ARCHER NORRIS

12 By \_\_\_\_\_  
13 H. Paul Breslin  
14 Attorneys for Defendant  
15 FEDERAL INSURANCE COMPANY

16 Dated: October \_\_\_\_\_, 2005

WILSON ELSEER MOSKOWITZ  
EDELMAN & DICKER LLP

17 By \_\_\_\_\_  
18 Louis Castoria  
19 Attorneys for Defendant  
20 ROYAL INDEMNITY COMPANY  
21 Successor in Interest to Royal Insurance  
22 Company of America

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 Dated: \_\_\_\_\_

Hon. Phyllis J. Hamilton

10/18/2005 08:52 FAX 925 930 6620

ARCHER NORRIS

2004

1 Counterclaim filed by Federal against Gregory S. Daily ("Daily"), the above-captioned action be,  
 2 and hereby is, dismissed without prejudice;

3 IT IS HEREBY STIPULATED that each party will bear its own costs with respect to this  
 4 action.

5 Dated: October \_\_\_\_\_, 2005

MORGAN, LEWIS & BOCKIUS LLP

6  
 7 By \_\_\_\_\_  
 8 Cristina M. Shea  
 9 Attorneys for Plaintiff  
 10 GREGORY S. DAILY

11 Dated: October 18, 2005

ARCHER NORRIS

12 By H. Paul Breslin  
 13 H. Paul Breslin  
 14 Attorneys for Defendant  
 15 FEDERAL INSURANCE COMPANY

16 Dated: October \_\_\_\_\_, 2005

17 WILSON ELSEER MOSKOWITZ  
 18 EDELMAN & DICKER LLP

19 By \_\_\_\_\_  
 20 Louis Castoria  
 21 Attorneys for Defendant  
 22 ROYAL INDEMNITY COMPANY  
 23 Successor in Interest to Royal Insurance  
 24 Company of America

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 Dated: \_\_\_\_\_

Hon. Phyllis J. Hamilton

27  
 28 MORGAN, LEWIS &  
 BOCKIUS LLP  
 ATTORNEYS AT LAW  
 SAN FRANCISCO

1-SF/7283996.1

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STIPULATION OF DISMISSAL (C 04-3791  
 PJH)

1 Counterclaim filed by Federal against Gregory S. Daily ("Daily"), the above-captioned action be,  
2 and hereby is, dismissed without prejudice;

3 IT IS HEREBY STIPULATED that each party will bear its own costs with respect to this  
4 action.

5 Dated: October \_\_\_\_, 2005

MORGAN, LEWIS & BOCKIUS LLP

7 By

8 Cristina M. Shea  
9 Attorneys for Plaintiff  
10 GREGORY S. DAILY

11 Dated: October \_\_\_\_, 2005

ARCHER NORRIS

12 By

13 H. Paul Breslin  
14 Attorneys for Defendant  
15 FEDERAL INSURANCE COMPANY

16 Dated: October 11, 2005

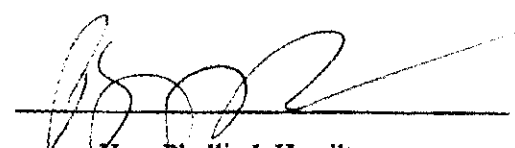
17 WILSON ELSEER MOSKOWITZ  
18 EDELMAN & DICKER LLP

19 By

20 Louis Castoria  
21 Attorneys for Defendant  
22 ROYAL INDEMNITY COMPANY  
23 Successor in Interest to Royal Insurance  
24 Company of America

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 Dated: 10/24/05

27   
28 Hon. Phyllis J. Hamilton